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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/726,078	11/29/2000	Paul A. Dvorak	00-422	9640

719 7590 10/23/2003

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EXAMINER

UNDERWOOD, DONALD W

ART UNIT	PAPER NUMBER
3652	

DATE MAILED: 10/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. <u>09/726,078</u>	Applicant(s) <u>Dvorak et al</u>	
	Examiner <u>Underwood</u>	Art Unit <u>3652</u>	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07/27/03
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 & 29 is/are pending in the application.
- 4a) Of the above claim(s) None is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 & 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

### **Detailed Action**

1. Review of applicants' appeal brief filed 07/21/03 has revealed that claim 19 should have been grouped with claim 1 since applicants' amendment filed 06/04/02 removed the position of the cylinder rod at the central position of the pivot member. Also claims 20-24 because of this central portion location is not met by Albright in view of Wallberg. Finally the Jones reference is 4,726,731 and Horton is 5,966,850. The following action corrects this error. If subsequent appeal is taken no appeal fee will be required. The examiner regrets any inconvenience caused by this action.

2. Claims 1-7,9, 11, 16, 18, 19, 25, 27 and 29 rejected under 35 U.S.C. 102(b) as being clearly anticipated by Wallberg.

Wallberg comprises a frame 1, a latch member (the lower end of 9), a link 9 (the upper end and middle section of 9), and a pivot member 7. The pivot member has three unnumbered pivots shown in figure 1. One is connected to frame 1, one to the link and one to the cylinder. The centerline runs perpendicular to figure 1 as 50 runs in applicants' figure 3. In Wallberg the latch member and link are comprised by element 9 as noted above. The claims do not preclude this integral connection. They merely require that the latch member and lines be connected.

3. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wallberg in view of Doering

It is well known to use slots in connections as shown by Doering at 69.

This arrangement prevents binding, it would have been obvious to provide a slot as claimed in Wallberg to prevent binding in view of the teaching in Doering because binding causes wear and breakage.

4. Claims 10,17 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallberg

It is conventional to provide various controls on a construction machine to divert hydraulic fluid to various cylinders to perform different functions. This arrangement cannot serve as a basis for patentability

5. Claims 10,17 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallberg in view of Jones 4,726,731 and Horton 5, 966, 850 it would have been obvious to divert fluid from the lifetime cylinders in Wallberg to the latch cylinders in view of the teaching in Jones (figure 9) and Horton (figure6).

6. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallberg it is conventional to control the cylinders on a construction machine together by using one handle. The examiner takes notice of this conventional control. It would have been obvious to control the cylinders in Wallberg with one handle in view of this conventional control.

7. Claims 20-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallberg.

The difference between the elements in claim 19 and Wallberg is the location of the pivots for 9 and 6 on pivot member 7. Applicants' points are switched versions of

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pivots for 9 and 6. Such a switched arrangements provides no unobvious result over the arrangement in Wallberg and as such is deemed an obvious alternate design arrangement since the points can be joined in one of these two arrangements or at the same point.

Regarding claim 21, the remarks in paragraph 6 above are herein repeated.

Regarding claim 26, the remarks in paragraph 5 above are herein repeated.

8. Claims 1-7,9,10 and 11-19, 25-27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albright in view of Wallberg.

It would have been obvious to substitute for the hydraulic actuator in Albright separate cylinders pivoted to each of 54 and 56 as claimed in view of the teaching in Wallberg to use separate cylinders for attachment locks.

Regarding claim 12, the remarks in paragraph 6 above are herein repeated.

Regarding claims 10,17 and 26 the remarks in paragraph 4 above are herein repeated.

9. Claims 10,17 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albright in view of Wallberg as applied to claim1 above, and further in view of Jones or Horton

It would have been obvious to divert fluid from the lifting cylinders in Albright or Youngers to the latch cylinders in view of the teaching in either Jones or Horton.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication should be directed to D. Underwood at telephone number (703) 308-1112

Underwood/hr  
October 21, 2003

*Donald W. Underwood* 10/22/03  
DONALD W. UNDERWOOD  
PRIMARY EXAMINER